

ESTTA Tracking number: **ESTTA656017**

Filing date: **02/14/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057674
Party	Defendant Party Fiesta, S.A.
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Submission	Other Motions/Papers
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Signature	/Oscar Omar Salazar/
Date	02/14/2015
Attachments	SignedAgreement Both parties.pdf(1714303 bytes )

## CO-EXISTENCE AGREEMENT

between


**PARTY FIESTA, S.A.**, whose business address is C/ Juan Ramon Jimenez, 15, in 08902 Hospitalet de Llobregat, Barcelona, SPAIN, hereinafter referred to as **PARTY FIESTA, S.A.**,

and

**Jose Rolando Ibarra**, whose address is 3307, 754 The Alameda, San Jose, California 95126, UNITED STATES OF AMERICA, hereinafter referred to as **Jose Rolando Ibarra**.

Jointly hereinafter referred to as "the Parties".

### PREAMBLE

**PARTY FIESTA, S.A.** is owner of US Supplemental Trademark Registration No. 3659551  "PARTY FIESTA" in international class 35 and US classes 100, 101 and 102, granted 21 July 2009 (hereinafter referred to as "PARTY FIESTA's trademark").

**Jose Rolando Ibarra** is applicant of the US trademark application with US Serial No. 85425291 "PARTY FIESTA BALLOON DECOR" in international class 41 and US classes 100 and 101, with application date 17 September 2011 (hereinafter referred to as "JOSE ROLANDO's trademark"). This application was rejected by the USPTO with decision dated 19 February 2013. The reason for the rejection is the existence of the above-mentioned registered trademark of **PARTY FIESTA, S.A.**. **Jose Rolando Ibarra** was granted a six months deadline to respond to this Office action.

On 13 August 2013, **Jose Rolando Ibarra** filed a cancellation action with the No. 92057674 against **PARTY FIESTA, S.A.**'s US Supplemental Trademark Registration No. 3659551.

### AGREEMENT

In order to resolve existing conflicts and to avoid future conflicts, the Parties agree as follows:

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1. **PARTY FIESTA, S.A.** grants **Jose Rolando Ibarra** the right to use and register the terms "PARTY FIESTA", but only in connection with the terms "BALLOON DECOR", namely as "PARTY FIESTA BALLOON DÉCOR", never solely as PARTY FIESTA, only in relation to the defined services under international class 41: *"Arranging professional workshop and training courses; Arranging, organizing, conducting and hosting birthday parties; Entertainment services, namely, conducting parties; Party and wedding planning and coordination services; Party and wedding planning consultation services; Party and wedding planning, coordination and consultation services; Party planning; Party planning consultation; Providing children's party centers for the purpose of entertaining children and celebrating birthdays; Providing information in the field of wedding party planning; Providing information regarding wedding planning for wedding parties; Rental of table-top decorative wishing wells for parties; Social club services, namely, arranging, organizing, and hosting social events, get-togethers, and parties for club members"*; and the use of the mark within the United States of America.
2. **Jose Rolando Ibarra** acknowledges that the words BALLOON DÉCOR need not be equal in size to the words PARTY FIESTA.
3. **Jose Rolando Ibarra** agrees to limit use of the words PARTY FIESTA solely to the colors red, blue and green, and agrees never to seek registration of his mark for any colors other than red, blue and green. He further agrees to always use and register his mark always in connection with the design of balloons connecting the words PARTY and FIESTA, namely:



Moreover, he agrees to never display his mark with the term PARTY directly above FIESTA, i.e.:

PARTY  
FIESTA

4. **PARTY FIESTA, S.A.** undertakes not to raise any objections based on PARTY FIESTA's trademark against the use of "PARTY FIESTA BALLOON DECOR" by **Jose Rolando Ibarra** as agreed to under paragraph 1.

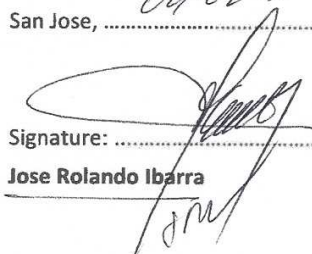
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5. **Jose Rolando Ibarra** undertakes not to raise any objections, in particular not to file any cancellation action and withdraw any pending legal actions, against the US Supplemental Trademark Registration No. 3659551 "PARTY FIESTA" or any actualization of it, and its use in the USA in relation to the registered services in international class 35: "Online retail store services featuring paper and cardboard articles and party items; retail store services featuring paper and cardboard articles and party items; wholesale store services featuring paper and cardboard articles and party item; import and export agencies; wholesaling and retailing; franchising, namely, consultation and assistance in business management, organization and promotion" and US classes 100, 101 and 102.
6. **Jose Rolando Ibarra** undertakes not to offer any goods under the name "PARTY FIESTA BALLOON DECOR", neither directly in a shop nor on the internet, which interfere with the goods and services offered by **PARTY FIESTA, S.A.** without requesting and attaining the explicit permission of such commerce from **PARTY FIESTA, S.A.**
7. **Jose Rolando Ibarra** undertakes not to prevent the selling of balloons by **PARTY FIESTA, S.A.** in the United States of America. In particular, he agrees not to raise any objection or to file any kind of legal action regarding this matter.
8. **PARTY FIESTA, S.A.** undertakes not to offer balloon decoration services, balloon design services and balloon decoration consultation services for events, in the same manner currently offer by **Jose Rolando Ibarra**.
9. If one Party breaches any of the obligations and/ or prohibitions defined within paragraphs 1 to 4, on that basis, the other Party shall be entitled to raise objections against the other Party's registrations, uses, new applications and/or registrations.
10. The Parties shall impose their obligations under this agreement upon their respective successors and upon their subsidiaries, divisions under common ownership, affiliates, assignees, associated companies, legal successors and/or licensees, who may apply for, register and/or use identical or confusingly similar trademarks or other designations for the same goods forming the subject matter of this agreement.
11. Each Party shall bear its own costs. This shall also apply for the costs of this agreement, letters of consent and any future proceedings.
12. This agreement shall be applicable in the USA.

13. The invalidity of individual provisions of this Agreement according to current or future laws, shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by such legal provision that comes closest to the intention of the Parties. The same shall apply for any gap in the wording of the Agreement. Any change or amendment shall require written form. The same applies for amendments to the prescribed written form.

14. The venue and applicable law for any disputes arising out of or in connection with this Agreement shall be the courts of the domicile of the defending Party.

Barcelona, 09-02-2015  
  
Signature: .....  
Name: MANUEL HERNANDEZ  
Post: .....  
**PARTY FIESTA, S.A.**

San Jose, 09-02-2015  
  
Signature: .....  
Jose Rolando Ibarra